

STATE OF MICHIGAN
COURT OF APPEALS

DEBORA J. CARLSON, f/k/a DEBORA J.
SCHEID, and RUSSELL CARLSON,

UNPUBLISHED
January 19, 2006

Plaintiffs/Counter-
Defendants/Third-Party Plaintiffs-
Appellants,

v

No. 257126
Kent Circuit Court
LC No. 03-000486-CZ

DUDIE G. CARPENTER, f/k/a DUDIE G.
QUILLAN, and THOMAS T. QUILLAN,

Defendants/Counter-Plaintiffs-
Appellees,

and

GRATTAN TOWNSHIP,

Third-Party Defendant-Appellee.

Before: Zahra, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order entering a consent judgment and resolving all pending claims between the parties. We affirm.

This action arose out of a boundary dispute between plaintiffs and defendants. Plaintiffs sought declaratory relief establishing the true east-west boundary line, and defendants counter-claimed to quiet title in the disputed strip of property. Plaintiffs also sued third-party defendant Grattan Township, alleging that the township had failed to enforce its zoning ordinance against defendants.

The parties reached a settlement agreement in April 2004. All parties signed the settlement agreement and agreed that a final consent judgment would be prepared and entered after a new survey of the property. The purpose of this survey was to obtain legal descriptions of the newly-shaped parcels resulting from boundary changes agreed to in the settlement agreement. These descriptions would be incorporated into the final consent judgment. As part of the settlement agreement, the parties agreed that plaintiffs would retain title to that portion of

the property south of an east-west line established six feet north of the northernmost point of the existing driveway. Defendants would keep all property north of that line. The parties agreed that two deeds would be incorporated into the final consent judgment, and that four survey monuments would be set between the parcels. The parties also agreed to an easement, allowing defendants to use the existing driveway on plaintiffs' resulting parcel.

The new survey was completed, and defendants' counsel prepared a proposed consent judgment. Plaintiffs refused to agree to the proposed consent judgment on the ground that it was inconsistent with the executed settlement agreement. After a brief hearing, the trial court found that the proposed judgment was consistent with the initial settlement agreement, and it entered the consent judgment. Plaintiffs' motion for reconsideration was subsequently denied.

We review for an abuse of discretion a trial court's decision to enforce a consent judgment. See *Trendell v Solomon*, 178 Mich App 365, 370; 443 NW2d 509 (1989). A trial court cannot extend a settlement agreement to include matters not originally included or contemplated by the parties. *Young v Robin*, 146 Mich App 552, 557-558; 382 NW2d 182 (1985).¹ An agreement to settle a pending lawsuit must comply with MCR 2.507(H) to be enforceable. *Michigan Mut Ins Co v Indiana Ins Co*, 247 Mich App 480, 483; 637 NW2d 232 (2001). Unless made in open court or reduced to a writing executed by the parties, a settlement agreement is unenforceable. MCR 2.507(H). The settlement agreement here was enforceable as it was in writing and executed by the parties, including the two plaintiffs and plaintiffs' counsel; there is no dispute on the matter. Plaintiffs did not agree to entry of the consent judgment itself because it did not meet with their approval. However, if the proposed consent judgment was indeed consistent with the settlement agreement, which was enforceable, the trial court would have the authority to enter the consent judgment as the mechanism by which to enforce the parties' contract, i.e., the settlement agreement. If there is consistency between the documents as to the parties' promises, rights, obligations, and duties, plaintiffs, in essence, implicitly approved of the language in the consent judgment at one time, but were now attempting to avoid their responsibilities under the settlement agreement by expressing disapproval of the consent judgment. Accordingly, we view the issue presented to us as whether the trial court erred in concluding that the consent judgment was consistent with the settlement agreement.

Plaintiffs argued that the surveyor set the property line, and accompanying monuments, less than six feet north of the northernmost point of the existing driveway, which resulted in legal descriptions of the newly-shaped parcels being incorporated into the consent judgment that are inconsistent with those contemplated in the settlement agreement. Plaintiffs also argued that the survey map does not specifically show or reference the overhead power line described in the settlement agreement that would form an easement boundary. Plaintiffs next argued that the settlement agreement called for only four survey monuments, but a fifth monument was placed on the north-south property line between the two parcels. Finally, plaintiffs argued that the

¹ "A consent judgment is merely reflective of the parties' agreement." *Young, supra* at 557. An agreement to settle a lawsuit is a contract that is governed by the legal principles generally applicable to the construction of contracts. *Id.* at 557-558.

survey map erroneously indicates a 72' by 228' easement, which is not at all consistent with the settlement agreement.²

With respect to the placement of five monuments as opposed to four monuments, the settlement agreement and the consent judgment both call for the placement of four monuments; therefore, they are entirely consistent. This issue falls in the realm of a grievance regarding enforcement or performance under the settlement agreement and consent judgment, not a dispute over whether those documents are consistent. The argument does not provide a basis to find that the trial court lacked authority to enter the consent judgment, which was consistent with the settlement agreement on the subject, and thus enforceable. We see no rational basis for this issue negating the validity of the consent judgment.

We also reject plaintiffs' argument with respect to the claim that the survey map erroneously indicates a 72' by 228' easement rather than describing the easement in relation to the existing driveway and the overhead electrical line, as called for in the settlement agreement. Plaintiffs argue that the driveway easement document provides for an easement over that portion of the driveway between the edge of the road and the point "where the overhead electrical line crosses the Grantor's parcel," and provides that the easement's "width shall be seven (7) feet from the center of the Driveway on each side." Therefore, plaintiffs assert that the easement consists only of the driveway itself and seven feet from its center on either side, and not a 72' by 228' strip of land as shown on the survey.

Plaintiffs' argument is wholly lacking in merit. If the language of an easement is plain and unambiguous, it is to be enforced as written and no further inquiry is permitted. *Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003). If the text of the easement is not ambiguous, extrinsic evidence may not be considered in determining the scope of the easement. *Id.* The plain language of the driveway easement document clearly grants an easement for ingress and egress over the existing driveway, extending only seven feet from the center of the driveway in either direction. The language further indicates that the easement covers only that portion of the existing driveway between the western edge of the road and the point "where the overhead electrical line crosses the Grantor's parcel." Because this language is not susceptible to multiple meanings, it is not ambiguous, and will be enforced as written. Therefore, extrinsic evidence such as the notation on the survey map is irrelevant, because it would not be admissible to alter the scope of the easement as expressly provided. Importantly, the survey map is not incorporated into the consent judgment, but rather the language correctly describing the easement, as found in the driveway easement document and as incorporated into the settlement

² On appeal, these will be the only arguments that we shall address. In their appellate brief, plaintiffs complain of 15 inconsistencies, yet do not identify them beyond the ones referenced by us above. The four arguments that we address formed the primary focus of plaintiffs' claims below. Further, plaintiffs complain of numerous violations of provisions contained in the settlement agreement and consent judgment; however, the issue of violations has nothing to do with the issue presented on appeal, which is whether the consent judgment is consistent with the settlement agreement. Violations of the consent judgment need to be addressed by the trial court in show-cause or other proceedings.

agreement, is likewise incorporated into the final consent judgment through attachment of the driveway easement document. Thus, the settlement agreement and the consent judgment are entirely consistent on the issue.

Plaintiffs' challenge to the consent judgment on the ground that it fails to depict the overhead electrical line at the western edge of the driveway easement is similarly without merit. Although the survey map does not show the electrical line, the language of the driveway easement document expressly refers to the electrical line, and this language was directly incorporated into both the settlement agreement and the consent judgment through attachment of driveway easement document. Again, there is consistency. Moreover, the survey map is not incorporated into the consent judgment. The absence of the electrical line on the map is immaterial. Furthermore, even though the survey map does not show the overhead electrical line, the footage distance between the electrical line and the centerline of Lincoln Lake Road was determined and reflected by the surveyor to show the extent of the easement. We agree with defendants' assessment that a reasonable surveyor would rely more on footage instead of an electrical line in describing an easement because the electrical line could subsequently be moved. Plaintiffs do not challenge the length of the easement as determined by the surveyor.

Plaintiffs finally argue that the surveyor set the property line, and accompanying monuments, less than six feet north of the northernmost point of the existing driveway, which resulted in legal descriptions of the newly-shaped parcels being incorporated into the consent judgment that are inconsistent with those contemplated in the settlement agreement. This is the only appellate argument presented by plaintiffs that gives us pause. However, on the basis of the record before us, we reject the argument. A survey, undertaken to further the settlement agreement, was completed, and the consent judgment was prepared on the basis of the survey and resulting legal descriptions. In response, plaintiffs merely averred that the property line between the parcels as surveyed, and the associated monuments, were incorrectly positioned because they were less than six feet north of the driveway; there was no specificity. Plaintiffs did not produce a supporting survey, did not accept an offer to have another survey done, did not rely on an affidavit or report from another land surveyor or similar expert, did not formally move for an adjournment or continuance in order to have time to acquire supporting evidence, did not claim or give any *particular* measurements of their own, did not provide any specific proof to justify their stance, and did not appear for the hearing on the motion to enter the consent judgment. This lack of evidence and effort in the face of a completed survey does not compel us to find that the settlement agreement and consent judgment were inconsistent, nor to remand for further proceedings. The lower court record includes the surveyor's affidavit that attests that he measured six feet north of the northernmost point of the driveway for purposes of establishing the east-west property line between the parcels. Although it appears that the affidavit was filed after the hearing regarding entry of the consent judgment and after denial of the motion for reconsideration, plaintiffs make no attempt to challenge or contest consideration of the affidavit, despite defendants repeated references to the affidavit.³ We conclude that the trial court did not err in finding that the settlement agreement and consent judgment were consistent. Because of

³ We do not rely on this affidavit for our holding.

this consistency, the court had the authority to enter the consent judgment, which was simply the mechanism by which to enforce the binding settlement agreement entered into by the parties.

Affirmed.

/s/ Brian K. Zahra

/s/ William B. Murphy

/s/ Janet T. Neff